

1 to you about Golf and Versus for a second, and
2 also about the Tennis Channel in terms of
3 cost. I guess I really need to close this
4 for the next five or ten minutes, Your Honor.

5 JUDGE SIPPEL: All right.

6 (Whereupon, at 5:09 p.m., the
7 hearing was adjourned to closed session.)
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CLOSED SESSION

MR. PHILLIPS:

Q You state in Paragraph 5 -- I believe it's still in Paragraph 5 unless it's been changed -- that the increase in costs under Tennis Channel's 2009 proposals would increase, would be between approximately [REDACTED] and [REDACTED] million dollars. Is that right, sir?

A That is correct.

Q Okay. Well, that's a total turn of the contract number, correct, sir?

A Correct.

Q So that goes over how many years, do you recall?

A I believe that was over [REDACTED] years.

Q So on a year basis, it would be between [REDACTED] million and [REDACTED] million. Is that right, sir?

A Yeah.

Q And then in paragraph 6, you write at the bottom of it that the additional licensing fees from the broader carriage that

1 Tennis Channel now seeks would be
2 approximately [REDACTED] million over the remaining
3 term of the contract. Do you see that, sir?

4 A I do.

5 Q Now, is that based upon the
6 proposal that Tennis Channel made in May of
7 2009?

8 A It is what? I'm sorry. The [REDACTED]
9 million?

10 Q Yes.

11 A No, it is not.

12 Q It just takes the license fees as
13 they are and doesn't reduce it for any
14 discounts that were offered in the May 2009
15 proposal?

16 A Yeah. It's based on my
17 understanding of the current demands.

18 Q Okay. And you understand that the
19 proposal that Tennis Channel made in 2009 was
20 substantially less than the amount that's in
21 the contract?

22 A Yes, although it's also my

1 understanding that offer is no longer on the
2 table but yes.

3 Q Now, sir --

4 JUDGE SIPPEL: Whose offer is it?
5 Is it Comcast's counteroffer or is it Tennis
6 Channel's offer?

7 MR. PHILLIPS: We are talking
8 about the May 2009 offer that Comcast turned
9 down in June of 2009.

10 JUDGE SIPPEL: But he said it's no
11 longer on the table. Whose offer was it? And
12 who pulled it off the table?

13 MR. PHILLIPS: Let's just ask that
14 question.

15 BY MR. PHILLIPS:

16 Q What is your understanding of --
17 did Comcast ever make a counteroffer into
18 that, that proposal, a financial counteroffer?

19 A At the time?

20 Q Yes.

21 A I actually don't know the answer
22 to that question.

1 Q And who has informed you that that
2 offer is off, the May 2009 offer is not on the
3 table?

4 A Mr. Solomon.

5 Q And when did he say that?

6 A Six weeks ago.

7 Q And when are you referring to?

8 MR. CARROLL: Do you want him to
9 be going into today's discussions?

10 MR. PHILLIPS: I don't, but he's
11 opened the --

12 MR. CARROLL: No. You know what?

13 MR. PHILLIPS: He opened the door
14 when he said that the offer is off the table.
15 I don't think that's fair, Mr. Carroll.

16 MR. CARROLL: No. I am not
17 protesting. I'm just making sure that you --

18 MR. PHILLIPS: I just don't think
19 it's fair to say the offer is off the table.

20 JUDGE SIPPEL: Maybe I'm missing
21 something here. What seems to be the rub?

22 MR. CARROLL: The issue is, Your

1 Honor, that any discussions the parties may
2 have been having during the lawsuit have been
3 cloaked in confidentiality because of the
4 lawyer process.

5 MR. PHILLIPS: Other than the --

6 MR. CARROLL: And the questioning
7 -- I'm sorry. I'll stop if --

8 MR. PHILLIPS: No. Go ahead. If
9 I may, let --

10 JUDGE SIPPEL: He hasn't finished.

11 MR. PHILLIPS: I'm sorry, Your
12 Honor. I really am.

13 JUDGE SIPPEL: You have to let him
14 finish.

15 MR. PHILLIPS: I'm sorry. You are
16 exactly right.

17 MR. CARROLL: So any exchange of
18 information the parties may have had recently
19 has been covered under confidentiality
20 restrictions so that the parties could have
21 any exchange without affecting the litigation.

22 JUDGE SIPPEL: I see. All right.

1 Let's walk away from this.

2 BY MR. PHILLIPS:

3 Q Let me back this up for a second.
4 Other than any conversations that you
5 participated on in connection with this
6 litigation, have you ever heard that offer
7 taken off the table, sir?

8 JUDGE SIPPEL: Mr. Phillips, I
9 said we were going to leave that.

10 MR. PHILLIPS: I just --

11 JUDGE SIPPEL: No. We are going
12 to leave it.

13 MR. PHILLIPS: Okay. Yes, sir,
14 Your Honor. Happy to.

15 BY MR. PHILLIPS:

16 Q Now, what is the per-sub rate that
17 Comcast pays for the Golf Channel, sir?

18 A I don't know the per-sub rate off
19 the top of my head.

20 Q About [REDACTED] cents per sub? Would
21 that sound right to you?

22 A Again, I think in terms of annual

1 expenses. I don't think in terms of per-sub
2 rates.

3 Q Do you know what the annual
4 expense that Comcast pays the Golf Channel is?

5 A I think it's in the neighborhood
6 of ■ to ■ million dollars a year.

7 Q Okay. And do you know what the
8 annual rate that Comcast pays for Versus is,
9 sir?

10 A It's in the neighborhood of ■
11 million a year.

12 Q And do you know the annual rate
13 that Comcast pays to the Baseball Network?

14 A I don't know off the top of my
15 head.

16 Q Okay. Do you think it's more or
17 less than Versus?

18 A I don't know off the top of my
19 head.

20 Q And do you know what right now
21 under the current arrangement Comcast pays for
22 the Tennis Channel?

1 A In the neighborhood of [REDACTED]
2 [REDACTED] dollars a year.

3 Q [REDACTED]

4 A Uh-huh.

5 Q And do you know what they would
6 have paid under the May 9th proposal?

7 A If Comcast had opted to carry it
8 on D1, I believe it would have been an
9 incremental [REDACTED] million of expense, so about
10 [REDACTED] million in the first year. And
11 if it had opted for the digital starter
12 packaging, I believe it would have been an
13 incremental [REDACTED] million, in that range. So
14 about [REDACTED] million a year.

15 Q And you're referring when you're
16 giving those numbers to the offer that Tennis
17 Channel made in May 2009, correct?

18 A Correct.

19 Q And the one that Comcast turned
20 down, correct?

21 A Correct.

22 Q Now, for Comcast to change the

1 distribution of Tennis Channel to a broader
2 level would require your approval, wouldn't
3 it, Mr. Rigdon?

4 A It would.

5 Q And you told my colleague in your
6 deposition that you would not grant that
7 approval, did you not, sir?

8 A I don't believe that's accurate.

9 Q Okay, sir. Well, let's go to your
10 deposition, if we could.

11 MR. PHILLIPS: I told you we would
12 come back to it, Your Honor.

13 JUDGE SIPPEL: Yes, you did.

14 BY MR. PHILLIPS:

15 Q And, if I may --

16 MR. CARROLL: What page, please?

17 MR. PHILLIPS: I'm getting there.

18 BY MR. PHILLIPS:

19 Q If I could ask you to turn to page
20 143, line 13, sir?

21 A Thank you.

22 MR. CARROLL: Sorry. Where are we

1 again?

2 MR. PHILLIPS: One forty-three,
3 line 13.

4 MR. CARROLL: Line 13? One
5 forty-three, line 13. Okay.

6 BY MR. PHILLIPS:

7 Q Now, let me read this to you and
8 see if you agree with it, Mr. Rigdon. At 13,
9 the question by my colleague here, Ms.
10 Pogoriler, was, "Is any system, any Comcast
11 system, today that wants to expand its
12 carriage of Tennis Channel beyond the sports
13 tier free to do so?"

14 And your answer was "I believe
15 that would require my approval. And, you
16 know, much as was the case at Charter, I would
17 not grant that approval."

18 Do you see that testimony, sir?

19 A I do, but if you read on, it says,
20 "Look, my" --

21 Q Sir, excuse me.

22 JUDGE SIPPEL: He handles it.

1 You've got Mr. Carroll here to protect you.

2 THE WITNESS: Okay, but I believe
3 that's being --

4 MR. PHILLIPS: Sir --

5 MR. CARROLL: It's okay. Just
6 answer his question.

7 THE WITNESS: All right. Please
8 ask the question again.

9 BY MR. PHILLIPS:

10 Q Did I read that correctly, sir?

11 A You read it correctly.

12 MR. CARROLL: Your Honor, for
13 completeness, I would ask that the very next
14 line and the answer after it be read for
15 completeness. Otherwise it's completely
16 misleading.

17 MR. PHILLIPS: I am happy to read
18 it.

19 BY MR. PHILLIPS:

20 Q And it goes on to say, "Why not?"

21 And you say, "With the current
22 kinds of economics that have been discussed,

1 I just don't see a good business to do it. It
2 would just increase our expense and take value
3 out of the sports tier and threaten those
4 revenues." Did I read that correctly, sir?

5 A You read that correctly.

6 Q Okay. And then, to go on, sir,
7 when Ms. Pogoriler asked you, "When you are
8 referring to economics, are you including by
9 that anything other than the license fee?"

10 And your answer there was "No,"
11 was it not, sir?

12 A It was.

13 Q Now, I would like you to keep
14 turning over until we get to 145. And I would
15 like to take you to line 4 on 145. And we'll
16 continue reading. Do you see where I am, sir?

17 A I'm sorry? What line?

18 Q Line 4.

19 A Yes.

20 Q Okay. "So local systems would
21 have to get your approval to carry Tennis
22 Channel pursuant to those Spring 2009 offers.

1 And you, your position is you would not grant
2 approval?

3 "Answer: Well, my understanding
4 is those offers are no longer on the table
5 from the Tennis Channel, but any change in
6 their current distribution would require my
7 approval.

8 "Question: Assuming those were on
9 the table, if a system came to you today and
10 said, 'We have this proposal from Tennis
11 Channel. It's this discount from May 2009,
12 Can we do it?' would your response be 'No'?

13 "Answer: It would be 'No.' It's
14 just not consistent with how networks
15 typically request additional carriage. At a
16 bare minimum, there's usually a substantial
17 free period for incremental distribution. I
18 don't know why we would agree just to take on
19 incremental costs for no perceived benefit and
20 potential harm to the sports tier revenues.
21 It doesn't make any sense."

22 Did I read that correct, sir?

1 A You did.

2 Q Thank you.

3 Now, your view is that if there is
4 additional distribution of the Tennis Channel,
5 the per-sub cost of that should be free. Is
6 that right, sir?

7 A I don't know that that's my
8 fundamental view in terms of what the right
9 value exchange is.

10 Q Well, sir, in the testimony that
11 you have given the Court, haven't you urged
12 the Court that if there's any additional
13 carriage to be given to Tennis Channel, you
14 want it to be for free?

15 A I would expect there to be a solid
16 value proposition. To the extent that the
17 Court is going to make a decision, I would
18 request that it at least be free because
19 there's no real business justification for
20 finding -- for providing the additional
21 distribution. There's no consumer demand for
22 it.

1 Q And when you say, "There's no
2 consumer demand for it," sir, have you looked
3 at any consumer surveys recently?

4 A I have.

5 Q And what consumer surveys were
6 those, sir?

7 A They were surveys that the company
8 had done over the course over several years.

9 Q And can you describe those for me?

10 A They're general questions asking
11 about customer satisfaction.

12 Q And when did you look at those,
13 sir?

14 A I looked at those over the past
15 few days.

16 Q Over the past few days in
17 connection with your testimony here today,
18 sir?

19 A Yeah. I was made aware of them
20 before that, yeah.

21 Q Sir, you testified on direct when
22 Mr. Carroll was asking you some questions that

1 you had evaluated whether to carry the Tennis
2 Channel again since you came. Is that
3 correct, sir?

4 A Can you repeat the question?

5 Q You testified to my colleague Mr.
6 Carroll that after you had come to the company
7 on February 1st, that you cone again had done
8 an evaluation of whether to carry the Tennis
9 Channel on a broader tier. Is that your
10 testimony, sir?

11 A Yes.

12 Q Okay. Now, when you did that,
13 sir, did you do any survey of the field before
14 you did it?

15 A I talked to my team members about
16 it and, you know, made my business judgment
17 based on my experience with Charter and based
18 on the information I was provided by my team
19 members.

20 Q Was there any written survey that
21 went out to the field that you looked at in
22 making that decision, sir?

1 A No.

2 Q And when you did that, sir, did
3 you consider the cost of programming on the
4 Tennis Channel when you made that decision
5 this time?

6 A I'm not sure I understand the
7 question.

8 Q Did you take into account when you
9 made this recent decision what the cost of
10 Tennis Channel's programming was, sir?

11 A The cost to Comcast or --

12 Q No. The cost to Tennis Channel,
13 what its programming was, sir. Did you
14 consider that?

15 A No. That wouldn't be part of my
16 evaluation.

17 Q That's not something you would
18 think about, would it be, sir?

19 A No.

20 Q Okay. And, sir, did you look,
21 other than in preparation for your testimony
22 today, in making the evaluation that you did

1 when you said you came, did you look at any
2 consumer surveys about how people felt about
3 the Tennis Channel?

4 A No. I didn't believe it was
5 necessary based on, you know, the feedback I
6 got from my team and their interaction with
7 the field and based on my prior experience
8 with Charter.

9 Q Your interaction with your team.
10 Do you mean Ms. Gaiski?

11 A With my team.

12 Q Well, let's talk about who that
13 is. Is that Ms. Gaiski?

14 A It's Ms. Gaiski. It's Mr.
15 Dannenbaum.

16 Q Mr. Dannenbaum?

17 A Uh-huh.

18 Q Did Ms. Gaiski go out and survey
19 the field?

20 A We're in regular contact with the
21 field. The field gets millions of phone calls
22 every day. And if the fact that the Tennis

1 Channel is not carried on a more highly
2 penetrated tier was a problem, we would know.

3 Q But did you go out and ask the
4 question of or did Ms. Gaiski go out and ask
5 the question to the field about whether or not
6 you were specifically considering carrying the
7 Tennis Channel again and you wanted to know
8 how the field was going to react? Did that
9 happen, sir, in this new evaluation you just
10 testified --

11 A No. I don't believe it's
12 necessary. The --

13 Q Sir, I'm sorry. Could you just
14 answer my question? I asked whether or not
15 that happened.

16 A No.

17 Q Thank you, sir.

18 Now, sir, from the deposition
19 testimony we just read, you told Ms. Pogoriler
20 that you would not melt down the Tennis
21 Channel in an individual system if they
22 requested it to you. Is that fair?

1 A Based on the current economics
2 that have been discussed, that's fair.

3 Q So you had melted down. I take it
4 the opposite of melting it down would be
5 freezing it. Is that a term?

6 A No, not a real one. I'm not sure
7 what you would mean if you used it.

8 Q You are essentially freezing
9 Tennis Channel up on the sports tier, are you
10 not, sir?

11 A I don't think. I don't think
12 that's accurate. What I am saying is that
13 based on the proposals that have been
14 discussed that the Tennis Channel has put in
15 front of Comcast, I see no business reason to
16 melt it down or to provide it with additional
17 distribution.

18 Some market dynamics changed. If
19 consumer demand changed, if we figure out a
20 better value exchange that was good for the
21 Tennis Channel and good for Comcast, I would
22 happily consider that.

1 So no, I wouldn't say it's frozen.

2 Q Sir, let me ask you a question.

3 When you did this new evaluation that you
4 testified that you have done in the last
5 couple of months, what offer were you at?
6 What were the economics of the offer that you
7 were discussing to Ms. Gaiski was discussing
8 with the field?

9 A I can't speak to what she was
10 discussing with the field. I was -- my
11 evaluation was looking at the economics of the
12 2009 proposal.

13 Q But don't you think it's relevant
14 if you're testing the field. Well, strike
15 that. The field representatives, the cost to
16 the Tennis Channel in their individual systems
17 impacts their budget, does it not, sir?

18 A The first question that you ask
19 the field or, rather, the first mechanism --

20 Q Sir, I'm sorry. Did you not
21 understand my question? I can do it again.

22 A Go ahead. Sure. Go ahead.

1 MR. CARROLL: I thought he was
2 answering, Your Honor.

3 JUDGE SIPPEL: I wasn't following
4 it that closely. Try it again.

5 MR. PHILLIPS: My question, I will
6 try to be very clear about it, Your Honor.

7 BY MR. PHILLIPS:

8 Q If you decide to carry the Tennis
9 Channel in any system out in the field, does
10 that decision impact the budget of the system
11 that is going to carry it?

12 A It does impact the budget or the
13 system that will carry it.

14 Q That's a yes, then, sir, right?

15 A That's a yes.

16 Q Okay. And when you're out --

17 JUDGE SIPPEL: Two yeses,
18 actually.

19 (Laughter.)

20 MR. PHILLIPS: I lost count, Your
21 Honor.

22 BY MR. PHILLIPS:

1 Q And when you are out there
2 discussing your proposal to the field about
3 whether or not there is interest in carrying
4 the Tennis Channel, what did you discuss in
5 terms of the economics of the proposal on the
6 table? What was the proposal on the table
7 that was being discussed in the field this
8 most recent time?

9 A I didn't discuss anything about
10 the field. The question is, is the field
11 telling us that they want the channel to be
12 melted, and the answer was "No, we're not
13 getting any feedback from the field that
14 there's consumer demand to have the channel
15 melted.

16 Q So it was not going out there. It
17 was just "Are you hearing anything,"
18 basically. Right?

19 A But that's the way it works. We
20 get millions of calls from customers every
21 month, and customers tell us what they want.
22 If there's a new network and it's a big

1 problem that we don't carry it, you better
2 believe we know it.

3 I don't have to reach out to the
4 field. The field reaches out to me. I know
5 it.

6 Q Did the field -- do you know
7 whether the field reached out to you on the
8 decision to carry the Hockey Channel, sir? Do
9 you have any evidence that it did?

10 A I wasn't there.

11 Q And do you have any evidence that
12 the field reached out to anybody at Comcast on
13 the decision to carry the Baseball Channel?

14 A I wasn't there.

15 Q Okay. And do you have any
16 evidence that the field reached out to anybody
17 at Comcast regarding the carriage of the Golf
18 Channel when it was renewed at your broadest
19 tier within the last year or so?

20 A That's a different issue. That's
21 a question of --

22 Q Excuse me, sir. I'm sorry.

1 Again, if you would just answer my questions
2 yes or no, or just let me know you can't
3 answer them yes or no, and then I can make a
4 decision whether to go on or not.

5 MR. CARROLL: Well, I'm not sure
6 that was a yes or no question, but --

7 JUDGE SIPPEL: I am not sure
8 either, but go ahead. Try it again.

9 MR. PHILLIPS: Certainly, if I
10 haven't lost it, Your Honor, my question was
11 did you hear from the field regarding whether
12 or not people wanted the Golf Channel, when
13 you made the decision to renew them at exactly
14 the same levels in the last couple of years.

15 THE WITNESS: I wasn't involved in
16 those negotiations.

17 MR. CARROLL: He is asking about
18 events that preceded his work with Comcast.

19 THE WITNESS: I certainly did hear
20 about it from the field when I tried to do
21 that at Comcast. It's a big problem.

22 MR. PHILLIPS: You mean at